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Our Ref: DEM16/1052/E JONKER/ks | Your Ref: | Date: 13 May 2025

**TO: Mr Jacob Mamabolo**

MEC for Infrastructure Development, Cooperative Governance and Traditional Affairs  
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Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1929 | Registration number 2010/025182/21

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**Vat registration number:** 4580257428 | \*At Greenacres, Gqeberha (previously Port Elizabeth)



Dear All

**RE: ACTING APPOINTMENTS IN THE CITY OF JOHANNESBURG**

1. We act on behalf of the Democratic Alliance and its Councillors serving in the City of Johannesburg Metropolitan Municipal Council. We address this letter of demand to you in connection with a resolution passed by the Council on 8 May 2025. The resolution concerns acting senior managers at the City.
2. Our clients have as of yet not been provided with a copy of the resolution. Our clients require a copy of the final resolution passed by Council by **17h00** on Friday, 16 May 2025.
3. We attach a copy of the relevant item, as it was served before Council, marked "**A**".
4. Subject to receiving Council's final resolution, our clients understand that Council's resolution comprised two elements.
  - 4.1. First, the Council resolved to "ratify" and "approve" various "acting arrangements" in senior management positions at the City, including in the office of the Municipal Manager.
  - 4.2. Second, Council resolved to authorise the acting Municipal Manager to apply to the MEC for Infrastructure Development, Cooperative Governance and Traditional Affairs (**MEC**) to extend the "acting arrangements" for three months.
5. The "acting arrangements" refer to the current **seven** acting senior managers, including the City Manager, at the City. In chronological order, they are as follows:
  - 5.1. Acting GH: Group Communication and Marketing, Mr Peter Monyuku, who was initially appointed to this acting position on 24 July 2024;
  - 5.2. Acting HoD: Public Safety, Mr Andries Mucavele, who was initially appointed to this acting position on 1 August 2024;
  - 5.3. Acting EH: Social Development, Dr Tinashe Mushayanyama, who was initially appointed to this acting position on 3 November 2024;
  - 5.4. Acting City Manager, Mr Tshepo Makola, who was initially appointed to this acting position on 27 December 2024;

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- 5.5. Acting ED Human Settlements (JDA), Mr Oupa Nkoane, who was initially appointed to this acting position on 7 January 2025;
  - 5.6. Acting Chief Operations Officer, Ms Helen Botes, who was initially appointed to this acting position on 20 January 2025; and
  - 5.7. Acting EH: Office of the City Manager, Mr Siyabonga Nodu, who was initially appointed to this acting position on 12 February 2025.
6. All the above acting officials were appointed for three months. As is clear from their appointment dates, *all* these officials' respective acting stints have ended. In the case of Mr Monyuku, his stint ended on 24 October 2024; and most recently Mr Nodu's stint ended on 12 May 2025.
  7. The Local Government: Municipal Systems Act 32 of 2000 (**Systems Act**) regulates the appointment of acting city managers and senior managers (i.e. managers directly accountable to the municipal manager). Sections 54A and 56 of the Systems Act empower the City's Council to appoint acting municipal managers and senior managers. Council may appoint such acting officials for a period not longer than three months. Council may **not** extend that period. Instead, Council may apply to the MEC "in special circumstances and on good cause shown" to extend the period of appointment for a further period that does not exceed three months.
  8. Accordingly, Council does not have the power to "approve" or "ratify" acting roles. Council's power is limited to appointing an acting city manager or senior manager for three months. If that three-month acting term expires, and the appointed person purports to act as city manager or senior manager, then Council cannot extend, ratify, or approve that purported acting. That acting (including any purported exercise of public power) is unlawful and inconsistent with the Constitution of the Republic of South Africa, 1996. The acting occurred without a lawful appointment, and outside the lawful three-month period.
  9. In these circumstances, to the extent that Council purported to approve or ratify any acting beyond three months of the appointment of a person to the office of the City Manager or a senior manager, the Council's resolution is unlawful and contrary to sections 54A and 56 of the Systems Act. Council simply lacks the power to ratify, approve, or extend acting beyond the three-month period contemplated in sections 54A and 56.
  10. Council's resolution furthermore purported to authorise the acting City Manager to apply to the MEC to extend the acting periods of the above seven senior managers. Our clients demand that the MEC refuse to extend the acting periods. The reason is simple. All seven acting periods have already expired. The MEC cannot extend an

acting period that has already expired. Any purported extension by the MEC will be unlawful.

11. There are four additional reasons why the MEC cannot approve the extension.
  - 11.1. First, in the cases of Mr Monyuku (2 May 2025) and Dr Mushayanyama (2 May 2025), the City seeks approval for an extension to a *past date*. The MEC is not empowered to extend an acting position at all after the expiry of an acting stint. But he is certainly not empowered to extend an acting stint *three months* after the acting stint ends, such as to “retrospectively” extend an acting stint.
  - 11.2. Second, in the cases of Mr Monyuku (24 July 2024) and Mr Mucavele (1 August 2024), these persons were appointed to act towards the middle of 2024. Yet the City asks for their extensions from 3 and 25 February 2025 respectively. The only implication is that the City previously extended these person's acting stints. As explained above, the City has no power to do so. Moreover, the MEC is limited to extending an acting stint by three months only. In turn, the MEC cannot extend an unlawfully extended acting stint, and he cannot extend an acting stint to a date beyond three months from when the person was first appointed to act.
  - 11.3. Fourth, Council passed the resolution without considering (never mind endorsing) any “special circumstances” or “good cause” warranting an application to the MEC for an extension. There are no such special circumstances. These positions have been vacant for many months. The City must fill them, or the MEC must take steps to fill them. The City has no good reason to request an extension of the above acting stints.
12. Finally, we emphasise that Council has not resolved to extend the three-month periods of the seven acting posts. Council does not have the power to do so under sections 54A and 56 of the Systems Act. Additionally, the item before Council recorded that any purported “extension” or “ratification” of acting appointments is contingent on the MEC's approval. The implication is that *all* the above seven senior manager offices—including the City Manager—are *vacant*. Any person purporting to occupy that office, or act in that office, does so illegally. As things stand today, they have not been lawfully appointed to that office and have no authority to be there.
13. Any attempt by any of the seven persons listed above to exercise public powers in an acting capacity would be unconstitutional, unlawful and invalid. The continued exercise of municipal powers by any such persons, absent lawful authority, is a flagrant violation of the Constitution and applicable legislation. It is a fundamental



principle of our constitutional law that public power may be exercised only within the bounds of authority lawfully conferred. This principle of legality flows directly from the Rule of Law, a founding value of the Constitution. In the present case, the illegality is manifest. Any decisions made under these ostensible acting appointments would be open to judicial challenge, and would be liable to being reviewed and set aside.

14. To avoid any doubt, we emphasise that we send this letter to the seven persons currently occupying the above senior manager offices in their personal capacities. These persons have no authority to occupy the above listed offices and employ the resources of the City *qua* incumbent of that office. Our clients reserve all their rights in this regard, including seeking personal costs orders against these seven persons for occupying public office without lawful authority.
15. In light of the above, we are instructed to demand that:
  - 15.1. Mr Mucavele, Mr Monyuku, Dr Mushayanyama, Mr Makola, Ms Botes, Mr Nkoane, and Mr Nodu confirm in writing by **17h00 on Friday, 16 May 2025** that they will no longer purport to make any decisions or act in the positions set out in the Council's decision; and
  - 15.2. the MEC confirms in writing by **17h00 on Friday, 16 May 2025** that he will not approve any application by the Council's for the extension of the above acting periods.
16. We also invite the MEC, as well as the Executive Mayor and the Speaker, to consider and rectify the illegalities demonstrated above and avoid the need for unnecessary litigation. The Systems Act in fact obliges the MEC to take steps to address any appointment, including acting appointments, concluded contrary to the Systems Act.
17. Our client's rights remain strictly reserved, including without limitation to bring urgent court proceedings to vindicate the rule of law and impose legal certainty upon the affairs of the City.
18. Our client trusts that you will treat this correspondence with the urgency and seriousness it deserves.

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

Per: